M-88-489

State of California

Memorandum

To : Chairman Larson, Commissioners Fenimore, Lee, Montgomery and Roden

Date : October 12, 1988

From : Fair Political Practices Commission
Lilly Spitz

Subject : The Effect of Proposition 73 on Local Ordinances

Government Code Section 85100[1/] as set forth in Proposition 73 provides:

> (a) Nothing in this chapter shall affect the validity of a campaign contribution limitation in effect on the operative date of this chapter which was enacted by a local governmental agency and imposes lower contribution limitations.
>
> (b) Nothing in this chapter shall prohibit a local governmental agency from imposing lower campaign contribution limitations for candidates for elective office in its jurisdiction.
>
> (Emphasis added.)

QUESTION

How should local jurisdictions apply the language of Proposition 73 to the local campaign contribution limitation laws currently in place or contemplated?

CONCLUSION

The rules of statutory construction require that statutes relating to the same subject should be read in harmony wherever possible. To do so, local laws must first be examined on a provision-by-provision basis to ensure that the provisions do not conflict with the state law. Where provisions of local law do conflict with the state law, the appropriate provisions of state law supersede.

1/ All statutory references are to the Government Code unless otherwise indicated.

However, because of the specific authority given by Proposition 73 to local jurisdictions to impose lower contribution limitations, every effort should be made to preserve the purpose and intent of local charters and ordinances within the parameters set forth in Proposition 73.

EXAMPLE:

The City of Los Angeles Charter Section 312 sets limitations on campaign contributions for election to city council and all city-wide offices. The limitations are calculated on a per election cycle. The city's primary and run-off elections are held in the same fiscal year. This is an important factor because the Proposition 73 limitations are based on a fiscal year cycle. Thus the cumulative effect of the contribution limits in a single fiscal year must be calculated to contrast them with the provisions of Proposition 73.

Under the Los Angeles City Charter, Most contributors to city council and city-wide candidates may contribute up to $500 per election per candidate. Since this is a more restrictive limitation than the $1,000 per fiscal year limit in Proposition 73 (Section 85301), the local charter provisions limiting contributions to $500 per election are valid under Proposition 73.

In Los Angeles, persons contributing to candidates for city-wide office and their controlled committees may contribute up to $1,000 per election. When the contributor is a political committee, a broad based political committee or a political party, this $1,000 per election limitation is lower than the $2,500 and $5,000 per fiscal year limitations of Proposition 73. (Section 85303.) We conclude, therefore, that the limitations of subdivision 6 as applied to political committees, broad based political committees and political parties are valid.

However, when the contributor is an individual, the Los Angeles limitation allows up to $2,000 in a single fiscal year while Proposition 73 allows only $1,000. Therefore, individuals who contribute to candidates for city-wide offices are limited to the $1,000 per fiscal year limitation imposed in Proposition 73.

The same analysis should be applied to the various other provisions of the local ordinance or charter. Where the provisions of a local law are complementary to Proposition 73,

they should stand. Where they conflict with Proposition 73, the limitations of Proposition 73 supersede.

DISCUSSION

The contribution limitations mandated by Proposition 73 are:[2]

1. Contributions from any person to a candidate or to the candidate's campaign committee are limited to $1,000 per fiscal year.[3] (Section 85301.) Contributions from a person to a political committee or political party are limited to $2,500 per fiscal year. (Section 85302.)

2. Political committees are limited to $2,500 per fiscal year to a candidate or the candidate's campaign committee. (Section 85303(a).)

3. Broad based political committees and political parties are limited to $5,000 per fiscal year to a candidate or the candidate's campaign committee. (Section 85303(b).)

Rules of Statutory Construction - How to Determine Whether a Local Ordinance is Enforceable Under Proposition 73.

A. The Local Ordinance Cannot Conflict with State Law.

Section 7 of Article XI of the California Constitution states that cities and counties may make and enforce ordinances not in conflict with general laws. All cities and counties, including charter cities and counties, are subject to and controlled by provisions of general law. Only where matters regulated by local charter are "municipal affairs" or a matter for "home rule" will the local law supersede state law. (City of Los Angeles v. State of California (1982) 138 Cal. App. 3d

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2/ The limitations described in the text apply to primary and general elections. Proposition 73 also provides specific contribution limitations during special elections and special runoff elections. For purposes of this analysis, however, we will focus on the main provisions of the measure. The analysis provided in this memorandum may be applied to the special election provisions of Proposition 73 as well.

3/ Section 85102(a) states that "Fiscal year" means July 1 through June 30.

526; San Diego Union v. City Council (1983) 146 Cal. App. 3d 947; Younger v. Board of Supervisors of San Diego County (1979) 93 Cal. App. 3d 864.)

Sections 4(a) and (c) of Article XI provide that county charters shall provide for a governing body of five or more elected members, and for the election or appointment of other county officers.

Section 5(b) of Article XI of the California Constitution specifically empowers charter cities to provide for "the conduct of city elections" in their charters. (Cal. Const., Art. XI, Sec. 5(b)(3).) It also grants "plenary authority" for a city charter to provide "the manner in which, the method by which, the times at which, and the terms for which the several municipal officers ... shall be elected or appointed...." (Cal. Const., Art. XI, Sec. 5(b)(4).)

The courts have indicated that the concept of "home rule" gives counties "certain local control over the means of carrying out governmental functions." (Younger v. Board of Supervisors, supra, at page 869 (emphasis added), citing Estate of Miller (1936) 5 Cal. 2d 588, 591.) The inclusion in a county charter of a provision limiting the number of terms a county elected official may serve has been held invalid because it reached to the qualification for a candidacy, which was beyond the limited powers authorized by Section 4 of Article XI. (Younger v. Board of Supervisors, supra.) Thus, we conclude that the "home rule" concept does not give a charter county the authority to impose campaign contribution limitations in conflict with state law.

Based on Section 5 of Article XI, the courts have recognized that "the mechanics of election procedures" in a chartered city are municipal affairs. (Canaan v. Abdelnour (1985) 40 Cal. 3d 7034, 710, citing Gould v. Grubb (1975) 14 Cal. 3d 662, 669.) Consequently, various city charter provisions concerning conduct of municipal elections have been held to prevail over general law. Specific examples of city election procedures upheld by the courts include form and content of ballots (Rees v. Layton (1970) 6 Cal. App . 3d 815; Mackey v. Thiel (1968) 262 Cal. App. 2d 362), procedures concerning recall of municipal officers (Muehleisen v. Forward (1935) 4 Cal. 2d 17), and procedures for qualification of a referendum or other measure for placement on the ballot

(Redwood City v. Moore (1965) 231 Cal. App. 2d 563; Lawing v. Faull (1964) 227 Cal. App. 2d 23).[4/]

No California court has considered whether campaign contribution limitations in city or county charters concern the conduct of city or county elections and thus are a municipal affair or subject to home rule. However, we believe that campaign contribution limitations concern the conduct of election campaigns rather than the conduct of elections, and thus are fundamentally different from the types of election procedure matters considered to be within the exclusive constitutional authority of a charter city or county.

The increased cost of election campaigns is a phenomenon experienced at all levels of government. Measures taken to de-escalate this trend, and other matters concerning the integrity of elected officials and the purity of the election process, are matters of statewide concern.

Since contribution limitations do not fall within the exclusive control of cities and counties, where a conflict exists between state laws and local laws concerning campaign contribution limitations, the state law will prevail. A conflict exists between a state law and a local charter provision or ordinance where the local law duplicates, contradicts or enters an area fully occupied by state law. (Cohen v. Board of Supervisors (1985) 40 Cal. 3d 277; In re Hubbard (1964) 62 Cal. 2d 119.)

4/ In June 1970, Article XI of the California Constitution was revised and reenacted. Section 5(b)(3), which authorizes city charters to provide for the "conduct of city elections" replaced portions of former Section 8 1/2. Former Section 8 1/2 granted city charters power to provide for "the manner in which and the times at which any municipal election shall be held." Arguably, the "conduct of city elections" in current Section 5(b)(3) covers a broader range of subjects than was covered under the previous language of Section 8 1/2. However, Section 13 of Article XI indicates this is not the case. Section 13 provides that the 1970 revisions to Article XI "relating to matters affecting the distribution of powers between the Legislature and cities and counties, including matters affecting supersession, shall be construed as a restatement of all related provisions of the Constitution in effect immediately prior to the effective date of this amendment, and as making no substantive change."

Proposition 73 specifically recognizes local jurisdictions' interest and participation in limiting campaign contributions in their local elections. The language of Section 85101 could even be seen as encouraging such involvement, so long as the local jurisdictions impose lower contribution limitations.

Where a state statute contains language indicating that there is no intent on the part of the state to assert exclusive jurisdiction, local laws are appropriate for supplementary regulation. (Pipoly v. Benson (1942) 20 Cal. 2d 366; Galvan v. Superior Court (1969) 70 Cal. 2d 851; People ex rel. Deukmejian v. County of Mendocino (1984) 151 Cal. App. 3d 1076.) Thus, the contribution limitations of a local jurisdiction will stand if they do not duplicate or contradict Proposition 73, and if they impose lower contribution limitations on candidates for elective office in the local jurisdiction.

B. Statutes Involving Same Subject Should be Harmonized, Wherever Possible.

It is a basic rule of statutory construction that wherever possible, statutes relating to the same subject or having the same purpose should be harmonized. Conflicting laws cannot be rewritten to save them from invalidation. (Patterson v. County of Tehama (1987) 190 Cal. App. 3d. 1298; Metromedia, Inc. v. City of San Diego (1982) 32 Cal. 3d 180.) However, statutes which address the same subject or concern, although in apparent conflict, should be construed to be in harmony with each other, so far as reasonably possible. (Louisiana Pacific Corp. v. Humboldt Bay Mun. Water Dist. (1982) 137 Cal. App. 3d 152; Natural Resources Defense Council, Inc. v. Arcata Nat. Corp. (1976) 59 Cal. App. 3d 959.)

Therefore, when analyzing whether local ordinances which impose contribution limitations are in accord with Proposition 73, one must first look to the plain meaning of the language contained in both laws (Patterson v. County of Tehama, supra), and then construe the statutes in such a way as to provide for a reasonable, fair and harmonious result in furtherance of their manifest purposes. (Dickey v. Raisin Proration Zone No 1 (1944) 24 Cal. 2d 796.) Moreover, the literal meaning of the words of a statute "must give way to avoid harsh results and mischievous or absurd consequences." (County of San Diego v. Muniz (1978) 22 Cal. 3d 29, 36.)

Section 85100 of Proposition 73 protects and specifically authorizes local campaign contribution limitations which are lower than those set forth in Proposition 73. Because of the

specific authority given to local jurisdictions to impose stricter campaign contribution limitations, in our implementation of Proposition 73 we must make every effort to preserve the provisions of local ordinances while at the same time working within the parameters of state law.

C. The Rule of Severability Allows Implementation of Valid Provisions of a Local Ordinance, While Voiding the Provisions in Conflict with State Law.

If parts of a local law are in conflict with the state law, it does not necessarily follow that the entire local ordinance must be eliminated. When the offending language can be mechanically separated, the nonconflicting provisions may be saved. (In re Blaney (1947) 30 Cal. 2d 643; see also Santa Barbara Sch. Dist. v. Superior Court (1975) 13 Cal. 3d 315; People's Advocate Inc. v. Superior Court (1986) 181 Cal. App. 3d 316; Patterson v. County of Tehama, supra, at pp. 1320-1321.)

Where it is possible to eliminate language in local contribution limitation ordinances which duplicates or contradicts the language in Proposition 73, and still have a statute which is grammatically correct, efforts should be made to do so. But a grammatically correct law will not survive if it is incapable of independent application, or where the remaining provisions of the ordinance no longer accomplish the original intent of the enacting body. (People's Advocate, Inc. v. Superior Court, supra.)

Consequently, local contribution limitation ordinances containing provisions which impose lower contribution limitations, even though they include provisions which allow contributions equal to, or higher than, the limitations mandated in Proposition 73, may be saved if the offending provisions can be edited from the local law without undercutting the purposes of the local ordinance, nor impeding the independent application of the remaining provisions.

Application of Proposition 73 to Local Ordinances

The Commission is aware of 54 local jurisdictions which have local campaign ordinances in effect. Of the 45 cities, eight counties and one special district, 40 have contribution limitations of varying degrees.

For example, the City of Adelanto limits contributions to $.15 per registered voter by a single source in a single

election. With approximately 1,250 registered voters in the city, a contributor is limited to $187.50 to a single candidate in a single election. The City of Berkeley limits contributions from persons to candidates to $250 per election.

Based on the information we have received concerning these two local ordinances, we would conclude, assuming that the information is accurate, that the contribution limitations in these ordinances would remain in effect. In both instances the limitation on contributions is lower than the lowest per-fiscal-year limitation mandated in Proposition 73.

Not all local ordinances are so easily contrasted with Proposition 73, however.

Example: City of Los Angeles - Charter Section 312 - Limitations on Campaign Contributions in City Elections.

The City of Los Angeles adopted an amendment to the city charter which imposes campaign contribution limitations in city elections.[5] The contribution limitations, set forth in Section 312 of the city charter (copy attached), are:

1. Contributions, including loans, from any person,[6] other than the candidate, to a candidate for city council shall not exceed $500 per single election. (Subdivisions 5 and 10.)

2. Contributions, including loans, from any person, other than the candidate, to a candidate or any controlled committee

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[5] For the sake of simplicity, this analysis will focus specifically on the contribution limitations in the Los Angeles charter. We will not address possible conflicts regarding reporting requirements, regulation of controlled committees, petty cash funds, or other provisions of the ordinance. The rules of statutory construction outlined herein are applicable to these various provisions as well. Should the Commissioners determine that such an analysis of other provisions is needed, we will prepare such an analysis for a future Commission meeting.

[6] The Los Angeles charter incorporates the definitions set forth in the Political Reform Act (the "Act") for interpretation of its provisions. "Person" is defined in the Act to mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. (Section 82047.)

of any candidate for Mayor, City Attorney or Controller shall not exceed $1,000 per single election. (Subdivision 6 and 10.)

3. Contributions from any person, other than the candidate, to a committee other than a controlled committee in support of or opposition to such candidate for Mayor, City Attorney or Controller shall not exceed $500 per single election. (Subdivision 7.)

4. All contributors must comply with an aggregate limitation on contributions in a single election, based on a formula which involves the number of offices appearing on the ballot. (Subdivision 8.)

5. Transfers of contributions to other candidates, or in support of or opposition to any city ballot measure are prohibited. (Subdivision 11.)

6. A candidate may contribute no more than $30,000 in personal funds to his or her own campaign unless he or she meets specific conditions relative to notice and deposit of funds. If the limit is exceeded, each opponent of such candidate is permitted to solicit and receive contributions in excess of the limitations imposed by Subdivisions 5 and 6, up to the amount of personal funds contributed by such candidate. (Subdivision 12.)

Comparison

In the City of Los Angeles the primary nominating election is held in April, and the general municipal election is held in June. Consequently, both elections are held within the same fiscal year.

The contribution limitations imposed under the ordinance apply separately to each of these elections. Thus, the total contribution limitation for city council elections is $1,000 per person per fiscal year. The total contribution limitation for the offices of Mayor, City Attorney and Controller is $2,000 per person per fiscal year for contributions to the candidate or his or her controlled committee, and $1,000 per person per fiscal year for contributions to other committees.

Comparing these basic provisions to the requirements of Proposition 73, we conclude the following:

A. Subdivision 5, which applies to city council elections, and Subdivision 7, which applies to election of other city officials, limit contributions to $500 per contributor per election. If a candidate is forced into a run-off election, a

second limitation of $500 per contributor goes into effect. Keeping in mind that both the primary and run-off elections take place in the same fiscal year, still the maximum contribution from a single contributor in a fiscal year is $1,000.

Proposition 73's lowest limitation is $1,000 per person per fiscal year. Thus, the provisions of Subdivision 5 and Subdivision 7 provide a stricter regulation of contributions by limiting all contributors to $500 in a given election. Both these provisions are valid and should remain in effect.

B. Subdivision 6 limits contributions to candidates or the controlled committees of candidates for the office of Mayor, City Attorney or Controller to $1,000 per election. Subdivision 6 provides:

> No person other than a candidate shall make, and no person or candidate shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election for Mayor, City Attorney or Controller, in support of or opposition to a candidate for such office, including contributions to such candidate and any controlled committees of any candidate, to exceed $1,000.
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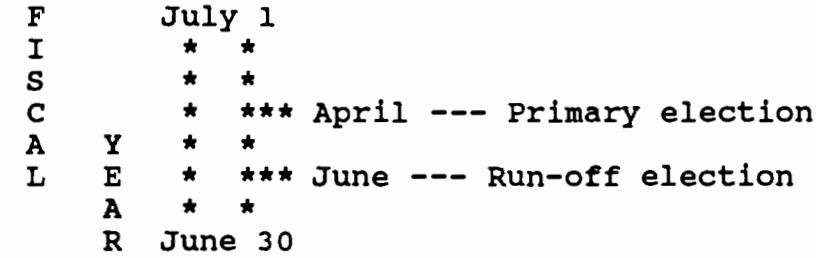
> (Emphasis added.)

Both the general and run-off elections in the City of Los Angeles are defined as "single elections". Since they fall within the same fiscal year, if a candidate for city-wide office is forced into a run-off election, the local limitation on campaign contributions is $2,000 in a single fiscal year.

Fiscal Year Calendar vs. L. A. Election Year Calendar



On its face, Subdivision 6 conflicts with the $1,000 per fiscal year limitation for individuals mandated by Proposition 73. Still, in an effort to save the local law and to put into

effect both statutes, if possible, we must harmonize the two if this can be achieved within the limits of rules of statutory construction. (Louisiana Pacific Corp. v. Humboldt Bay Municipal Water Dist., supra; and National Resources Defense Cncl., Inc. v. Arcata National Corp., supra.)

Does the Statutory Scheme of the Los Angeles Charter Overcome the Conflicts with Proposition 73?

It has been suggested that Subdivision 6 should remain in effect because it is part of a comprehensive "statutory scheme" imposing campaign limitations which includes lower contribution limitations when viewed from the perspective of an election cycle rather than a per-fiscal-year time frame. (See letters from Anthony Alperin for the Office of the City Attorney of Los Angeles, and from Kathleen J. Purcell of the law firm of Remcho, Johansen and Purcell, attached.)

For example, under the provisions of the Los Angeles charter a candidate for Mayor may receive $1,000 per contributor for the primary election, and another $1,000 if a run-off election is necessary. The $1,000 per contributor limitation applies to all contributors to a candidate's election campaign, and because the limitations are based on a "per-election" time frame, the most any one contributor could give to a candidate is $2,000 during the entire four-year election cycle.

Under the provisions of Proposition 73, a candidate for Mayor in Los Angeles could receive $1,000 per fiscal year from individuals, and $2,500 or $5,000 per fiscal year from political committees and broad based political committees or parties, respectively. Thus, in a four-year campaign cycle, a candidate for Mayor could receive up to $4,000 from an individual, $10,000 from a political committee and $20,000 from a broad based political committee or a political party, rather than the maximum of $2,000 from any contributor allowed under Subdivision 6.

To summarize,

Maximum allowed per four-year election cycle:

Under Los Angeles Charter:	$2,000 per contributor
Under Proposition 73:	$ 4,000 per individual $10,000 per political committee $20,000 per broad based political committee or party

Maximum allowed in single fiscal year:

Under Los Angeles Charter:	$2,000 per contributor
Under Proposition 73:	$1,000 per individual $2,500 per political committee $5,000 per broad based political committee or party

Kathleen Purcell, an attorney with Remcho, Johansen and Purcell, argues that in implementing the limitations on contributions, the Commission "should look to the overall effect of the local regulation to determine whether the local limits are stricter than Chapter 5" of Proposition 73. Ms. Purcell cites the Commission's discussion in In re Alperin (1976) 3 FPPC 77, for the premise that the Commission must adopt a broad view toward local regulation. She notes that in Alperin the Commission gave support to the notion of allowing flexibility to local governments in developing their conflict-of-interest codes, pursuant to their duties under Section 87300.

In Alperin, the Commission held that the Act prohibits a code reviewing body from going beyond certain requirements of the Act in adopting local conflict of interest codes. The Commission discussed the flexibility allowed to local jurisdictions in developing their conflict-of-interest codes, and specifically noted that the Act is not intended to preempt the field of conflict-of-interest regulation. However, the Commission concluded that local code reviewing bodies must confine their local legislation within the boundaries set forth in the Act, and only within these basic parameters can a local jurisdiction impose additional requirements. (In re Alperin, supra, at p. 80.)

Anthony Alperin, Assistant City Attorney for the City of Los Angeles, notes that both the State of California and the City of Los Angeles have enacted comprehensive schemes of campaign finance limitations. Because each scheme operates in the context of other provisions within its scheme, he asserts that it is necessary to analyze the "overall impact of each scheme". He cites In re Iverson (1926) 199 Cal. 582, and Galvan v. Superior Court (1969) 70 Cal. 2d 851, to support his argument that where both the state and the local jurisdiction have comprehensive legislative schemes the Commission must take the local scheme as a whole in deciding whether it is valid under the state law.

Mr. Alperin concludes that there are major differences in the ways in which the two schemes operate, complicating comparison between them, and that "because of these basic differences between the two statutory schemes, we believe that a comparison of the

contribution limits in the two laws on the basis of a 'fiscal year' is inappropriate." (Alperin letter of September 15, 1988, at page 4.)

Both Mr. Alperin and Ms. Purcell focus on the practical consequence of imposing the fiscal year limitation on the Los Angeles city-wide candidates. They note that taken from the perspective of an election cycle of four years, the Los Angeles charter has stricter limitations, as noted previously. (See chart at page 11.)

Additionally, as a practical matter, the fiscal year scheme constitutes a $1,000 per-election limitation for those candidates involved in elections held in June and November. Thus, a candidate for Assembly would be subject to a $1,000 limit for the June primary and to a new $1,000 limit for the November general election. If the $1,000 per-fiscal-year limit is applied to Los Angeles city-wide candidates, these candidates would be subject instead to a $1,000 limit which would cover both elections. Further, both Mr. Alperin and Ms. Purcell look to the special election provisions of Proposition 73 (Section 85305) to confirm their supposition that it is the intent of the initiative that the lowest limitation to be imposed by the new law is $1,000 per election.

Finally, Mr. Alperin and Ms. Purcell conclude that it does not appear that the limitations of the initiative were intended to apply to situations where regular primary and general elections are held during the same fiscal year. Ms. Purcell argues that such an interpretation would create a two-tiered contribution system - one tier for jurisdictions with election calendars consistent with a fiscal year scheme, and one tier for jurisdictions with two elections in a single fiscal year. She asserts that the statute should not be construed to achieve such an "absurd result."

We find these arguments unpersuasive. Both Ms. Purcell and Mr. Alperin are asking the Commission to put aside the clear and specific language of Proposition 73 which limits campaign contributions on a fiscal year basis. They ask the Commission to declare this limit "inappropriate" and "absurd." We have no more information regarding the purpose and intent of the fiscal year language than does anyone else, but where the language is clear, we also have no authority to allow for creative interpretation. (See Patterson v. County of Tehama, supra, at p. 1318.)

The cases cited in support of the argument for approving the Los Angeles limitations because they are part of a comprehensive statutory scheme do not apply in this situation. The courts have

focused on the "statutory scheme" of a given body of law where there is a question of state preemption over local law. One must look to the whole purpose and scope of the legislative scheme to determine whether the Legislature intended to occupy a particular field to the exclusion of all local regulation. (Galvan v. Superior Court (1969) 70 Cal. 2d 851, citing In re Lane (1962) 58 Cal. 2d 99.)

The question of whether the state has occupied the field of campaign contribution limitations is not at issue here. Proposition 73 specifically authorizes local regulation. Understanding that state law allows local regulation, the only analysis to be done is to determine whether the specific provisions of Section 312 of the City of Los Angeles charter can be harmonized with the provisions of the state law.

Mr. Alperin and Ms. Purcell argue that the authorization from Proposition 73 gives local jurisdictions the authority to allow higher campaign contributions in a given fiscal year if the practical effect of the statutory scheme of the local law is to impose lower limits per election cycle. We disagree.

It is a basic rule that "a provision in state law which allows local regulation will not validate an ordinance if it in fact conflicts with state law." (Natl. Milk Producers Assn. of California v. San Francisco (1942) 20 Cal. 2d 101.) While a local jurisdiction may have some flexibility in fashioning its contribution limitation laws, it must still comply with the provisions of the state law. "When state law and local ordinance are in conflict, the situation is not changed by declaration that the Act shall be construed as though no conflict exists." (In re Iverson, supra.)

It is important to be mindful of the Commission's role in interpreting Proposition 73 as applied to local contribution limitation laws. Because the Commission is the primary enforcement agency for violations of the Act, it must give clear guidance to persons subject to its jurisdiction on appropriate application of the law.

As stated in McMurtry v. State Board of Medical Examiners (1960) 180 Cal. App. 2d 760, 767:

> It is well settled that 'a statute which either forbids or requires the doing of an act in terms so vague that men (sic) of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due

> process of law'. This principle applies not only to statutes of a penal nature but also to those prescribing a standard of conduct which is the subject of administrative regulation.
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> (Citations omitted.)

When the provisions of Proposition 73 are read together, the meaning is plain that the contribution limits are imposed on a fiscal year basis. There is no room to interpret the contribution limitations statutes to allow for an election cycle basis. To read the statutes in such a tortuous manner would give rise to varying interpretations. Those who read only the statute would conclude quite reasonably that one result was required. Those who read the Commission interpretation would reach a different conclusion. This would lead to the very confusion that results from a vague and indefinite statute, and as such, would violate due process.

The language of Proposition 73 is "definite enough to provide a standard of conduct for those whose activities are prescribed as well as a standard by which the agencies called upon to apply it can ascertain compliance therewith." (McMurtry, supra, at p. 766.)

Is Subdivision, 6 Which Conflicts with Proposition 73, Entirely Invalid?

It has also been suggested that Subdivision 6 be deemed completely invalid since it conflicts with the limitations imposed by Proposition 73 on individuals by allowing an aggregate of $2,000 in contributions in a single fiscal year. The strictest statutory construction could result in such a conclusion.

Subdivision 6 of the Los Angeles charter provides that contributors may give $1,000 per election, which allows a $2,000 maximum if a run-off election is necessary. With respect to contributions from individuals, Subdivision 6 imposes a higher limit than in Proposition 73. Subdivision 6 imposes lower limits, however, for contributions from committees and political parties. The Los Angeles charter does not specify various classes of contributors (e.g., individuals, political committees, broad based political committees, parties). Instead it simply applies its limits to all "persons," which includes all categories of contributors.

Where the offending language of a statute can be mechanically excised, the nonconflicting provisions may be saved. (See In re Blaney, supra, and other authorities cited

at page 7 of this document.) Here specific words which could be mechanically stricken from the provision are not used. The principles of severability prohibit the rewriting of a local law to conform it to state law. Therefore, attempting to substitute for the word "person" in the local law a list of the various classes of contributors specified in Proposition 73, while at the same time attempting to sever "individual" from that list, is at odds with these principles.

However, if Subdivision 6 were to be held completely invalid, contributors to a candidate for Mayor, City Attorney or Controller, or to his or her controlled committee, would be governed only by the limitations in Proposition 73. This would allow candidates for Mayor, City Attorney and Controller in the City of Los Angeles to receive more than ten times the current charter limit on contributions from political committees, broad based political committees and political parties. (See chart on page 11.) We believe such a consequence would be inconsistent with the purposes of both statutes.

Subdivision 6 is Valid So Long As it is Applied Within the Limitations Imposed by Proposition 73

Because of the specific authority given to local jurisdictions to enact lower contribution limitations, the Commission must make every effort to give effect to both laws, and to avoid harsh results or absurd consequences. (County of San Diego v. Muniz, supra.) It is necessary, therefore, to look to the language of the state law and to harmonize the provisions of the local law. To this end we conclude that the $1,000 limit per contributor per election is valid so long as no more is contributed in a given fiscal year than is permitted by Proposition 73.

This conclusion is based on two principles. First, the fiscal year cycle of Proposition 73 is not circumvented by local law. Second, the authority for the City of Los Angeles to impose lower limitations comes from the precise language of Proposition 73. (Section 85100.) Therefore, where possible, we must give full effect to the provisions of the Los Angeles Charter which impose lower limitations. Subdivision 6 applies the $1,000 limitation to all contributors, while Proposition 73 imposes limitations based on classes of contributors. This lower limitation should be preserved, if possible, while at the same time implementing the provisions of the state law.

As an example of the practical application of this conclusion, if an individual has given $1,000 to a Mayoral candidate or his or her controlled committee before the primary, and the candidate is forced into a run-off, the

contributor has reached the limit and may not contribute in the run-off election. On the other hand, if the contributor has given $500 or $800 before the primary and the candidate is forced into a run-off, the contributor may give an additional $500 or $200 respectively for the run-off campaign. Other classes of contributors may give $1,000 per election, since the $2,000 in contributions per fiscal year permitted under the charter does not exceed the limits imposed by Proposition 73. In this way the charter provisions permitting larger contributions in city-wide elections than allowed in other provisions of the charter is respected, but the specific fiscal year limitation of Proposition 73 is also applied.

Far from achieving an "absurd" result, as is suggested by Ms. Purcell, we feel that harmonizing the Proposition 73 limitations with the provisions of the Los Angeles charter furthers the purposes of both enactments.

Finally, as was pointed out by Ms. Purcell in her letter, the city has control over its election schedule. She argues that a city currently holding elections in April and June could "circumvent the lower limits imposed by the fiscal year structure" by scheduling its elections in June and November. If the City of Los Angeles chose to amend its charter to alter its election schedule in order to allow $1,000 in contributions per election, this would not be a circumvention of Proposition 73's limitations. Under those circumstances the local law would impose lower contribution limitations than Proposition 73, and would be perfectly valid.

C. Subdivision 8 imposes an aggregate limitation on all contributors to candidates for elective city offices. Proposition 73 does not include aggregate limits.

Aggregate limitations impose additional restrictions on contributors, ensuring that all funds given from individual contributors do not exceed a specified total amount. In an effort to harmonize the two laws and preserve the purpose and intent of the limitations, we conclude that the aggregate limitation provision in the Los Angeles ordinance imposes a lower contribution limitation than Proposition 73. Therefore, it is enforceable.

D. Subdivision 10 imposes limits on loans to candidates. Loans are a type of contribution. Thus, the same analysis used for contributions limited under Subdivisions 5 and 6, above, applies to Subdivision 10.

E. Subdivision 12 imposes some restrictions on a candidate's use of more than $30,000 in personal funds in connection with his or her campaign for elective office. Proposition 73 contains no restrictions on the amount of personal funds candidates may contribute to their own campaigns. Thus, Subdivision 12 is a permissible supplement to Proposition 73 since it imposes additional restrictions on candidates.

The remaining provision of Subdivision 12 allows opposing candidates to solicit and receive, and their contributors to make, contributions in excess of the contribution limitations provided in Subdivisions 5 and 6, if the candidate exceeds the $30,000 limit. Subdivision 12 currently provides that an opponent may solicit and receive contributions in any amount until he or she has raised contributions in amounts equal to the personal funds deposited by the candidate in his or her campaign account.

The language of Subdivision 12 which allows contributions in any amount is in conflict with Proposition 73. However, it is possible to harmonize the language of Subdivision 12 with state law to a limited extent. Contributors should be permitted to exceed the Los Angeles contribution limits, up to the amounts permitted by Proposition 73.

For example, an opposing candidate wishing to comply with Subdivision 12 would be allowed to solicit and accept $1,000 per fiscal year from persons (individuals and businesses), $2,500 per fiscal year from political committees, and $5,000 per fiscal year from broad-based political committees and political parties for that period of time necessary to raise funds equal to the amount of personal funds deposited by the candidate in his or her campaign account.

F. Subsection T provides that Section 312 becomes operative, and shall apply to all contributions received on and after July 1, 1985. Further, it provides that contributions received before July 1, 1985, shall not be used for election for city office after the general municipal election held in 1987. Consequently, all contributions for the 1989 city election must comply with the city contribution limitations.

Proposition 73 provides that contributions acquired prior to January 1, 1989, cannot be used to support or oppose a candidacy for elective office at the state or local level. (Section 85306.) Both provisions seek to create a "level

playing field" for elections held under the campaign limitations imposed.

At first blush, Subsection T of the Los Angeles charter is in conflict with Section 85306 of Proposition 73 since it allows funds collected prior to January 1, 1989, to be used for candidacies for elective office after that date. However, the Commission has recently adopted emergency Regulations 18536 and 18536.1 to clarify the restrictions on use of campaign funds required by Section 85306. The emergency regulations permit candidates to carry forward, after January 1, 1989, any contributions received prior to that date, which are in compliance with the contribution limitations of Proposition 73.

The U. S. Supreme Court has upheld limitations on large contributions as necessary to prevent corruption. Limitations on political campaign expenditures, however, are not seen by the court as a means to prevent corruption. Because of the direct restriction on constitutionally protected political activity, the court has struck down all mandatory expenditure limitations brought before it. (Buckley v. Valeo, supra; Fed. Election Comm'n v. Nat. Conserv. Pol. Action (1985) 420 U. S. 480.) The Commission emergency regulations were adopted in order to narrow the scope of Section 85306 because of concerns that the statute otherwise may be unconstitutional. (See Commission Memorandum, August 31, 1988: Use of Campaign Funds.)

The practical effect of the regulations is to allow candidates who have been, or are presently receiving contributions within the limitations set by law in Proposition 73, to use those funds for their campaigns after January 1, 1989. In this way, candidates who have already sought to eliminate the corrupting nature of the contributions received will not have their political activities unconstitutionally restricted by the disgorgement provisions of the new law.7/

7/ It has been suggested that the Commission's emergency regulations supersede Subsection T of the Los Angeles City Charter and allow city candidates' and officeholders to carry over into 1989 campaign funds previously restricted by Subsection T. We disagree. Such a result would be contrary to the intent of Proposition 73, which permits local regulation to the extent it is more restrictive than provided under state statute.

The Los Angeles charter requires that all the contributions received since July 1, 1985, by candidates for city council or city-wide office be within the single election limitation of $1,000 per contributor required by the city charter. In other words, assuming all candidates for city council and city-wide office are complying with the local limitation on contributions, no candidate has received contributions from any single contributor totaling more than $1,000 since July 1, 1985. Consequently, the contributions received by all candidates for city offices are within the limitations imposed by Proposition 73, and are not "campaign funds" for purposes of Section 85306, with one exception.

The exception to this outcome is any opposition candidate who has taken advantage of Subdivision 12 of the charter. Subdivision 12 provides that where a candidate uses personal funds of $30,000 or more, the opposition candidate may receive contributions without regard to the charter's campaign limitations, to match the personal funds used. As was discussed on page 18, Subdivision 12 should be allowed to stand to a limited extent. While they may exceed the Los Angeles contribution limits, only those contributions within the limitations set by Proposition 73 may be rolled over for campaigns after January 1, 1989.

SUMMARY

The provisions of Proposition 73 supersede local campaign contribution ordinances except where the local ordinances impose lower contribution limitations than those imposed by Proposition 73.

The foregoing analysis of the provisions of the City of Los Angeles' contribution limitation law may be used as a model for local jurisdictions with limitations currently in effect. While the discussion of the Los Angeles ordinance does not exhaustively address all potential issues which could be raised, it does provide guidelines for future action.

RECOMMENDATION

Absent an advice requestor, staff recommends Commission adopt, as its formal policy, the analysis provided herein for purposes of future Commission advice to local jurisdictions which currently have in place, or are contemplating adoption of campaign contribution limitation laws.

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